

UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

JAN ~ 9 2006

For The Northern Mariana Islands
By _____
(Deputy Clerk)

ANGELO M. LABORCE,
Plaintiff,

Civil Action No: 05-0036

v.

S-WON INC et al.,
Defendants.

MOTION TO DISMISS
OR IN ALTERNATIVE FOR SUMMARY JUDGEMENT

COMES NOW, Defendant, Darrel M. Quitugua, Pro-se, hereby respectfully moving this honorable court to dismiss or in alternative grant summary judgement in favor of Defendant Quitugua.

Statement of The Case

In summary Plaintiff alleges that on April 19, 2004 he was working as a security guard at Capitol Poker for his employer S-WON when Defendant John approached the casheir booth and demanded money from Plaintiff. Defendant John then proceeded to the door of the casheir booth demanding of Plaintiff that it be opened while Plaintiff was standing behind the door of the booth securing the lock to the door. Using the gun Defendant John shot the door lock entered the booth taking the money from the casheir booth. Plaintiff was hit by the gunshot causing injury to his hand. After stealing the money Defendant John fled the scene with accomplices defendants Daniel, Joe and DARREL. In Plaintiff complaints he seeks money danages claiming Failure to Obtain Workers Compensation Insurance against Defendants S_WON and P&S, Personal Liability of Defendants KIM for S-WON Liability, Assualt & Battey against Defendants JOHN, DANIEL, DARREL & JOE as well as Intentional Inflict-

ion of Emotional Distress.

ARGUMENT

A motion to dismiss for failure to state a claim under Rule 12(b)(6), Fed.R.Civ.P., should be granted if "it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief.Broam v. Bogan, 320 F.3d 1023(9th Cir. 2003). In making this decision the Court must"treat all well-pleaded allegations in the complaint as true." Id. It is not, however, required to "accept as true legal conclusions or unwarranted factual inferences.

Alternatively, relying on the materials submitted by defendants, this Court could grant summary judgement. The entry of summary judgement is proper only"if the pleadings, deposition, answer to interrogatories and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgement as a matter of law."See Fed.R.Civ.P 56(c). In determining whether summary judgement should issue, the facts and inferences from these facts are viewed in light most favorable to the non-moving party and the burden is placed on the moving party establish both the absence of a genuine issue of material fact and that it is entitled to judgement as a matter of law. See Fed.R.Civ.P 56(c); Matsushita Eletric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87(1986); Anderson v. Liberty Lobby Inc, 477 U.S. 242,247 (1986); Celotex Corp v. Catrett, 477 U.S. 317,322(1986).

Once the moving party has met this burden, however, the non-moving party may not rest on the allegations in it's pleadings

but by affidavit and other evidence must set forth specific facts showing that a genuine issue of material facts exists. Fed.R.Civ.P. Rule 56(e). To meet this burden, the non-moving party "must present affirmative evidence in order to defeat a properly supported motion for summary judgement." Anderson, 477 U.S. at 257(1986). Thus, the non-moving party "must do more than show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586. "Where the record as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'"

Plaintiff Complaint Should Be Dismissed

Plaintiff alleges that the actions of defendant JOHN and accomplices defendants DANIEL, DARREL & JOE was the direct result of assault and battery suffering severe injuries to his hand which caused fear and emotional distress after the robbery.

Defendant DARREL QUITUGA begins contending that he has been incarcerated for a substantial period of time and he is indigent. Defendant DARREL also contends, and as the Plaintiff facts allegge that he did not fire the gun which resulted in Plaintiff injury, plan or instruct defendant JOHN firing of the gun. Again Defendant DARREL did not fire this gun which resulted to Plaintiff injury and Defendant JOHN did not ~~pur~~osely shot Plaintiff, his actions shooting the door lock act was not intended to do injury to Plaintiff or cause him harm in any way.

Furthermore Defendant DARREL QUITUGUA was cleared and not convicted or prosecuted for this charge which constitutes dismissal. Plaintiff fails to plead any facts showing that Defendant DARREL QUITUGUA intentionally intended to cause him harm. Without the requisite showing intent to harm, Plaintiff's assault and battery claim

fails and should be dismissed.

CONCLUSION

For all of the foregoing reasons, defendant respectfully requests Plaintiff's claims be denied and this matter be dismissed with prejudice or, in alternative, that judgement be entered in favor of defendant.

Respectfully submitted,

Dated this 20 day of Dec 2005 Signature: 

Darrel Quitugua #00405-005
FCI Sheridan
P.O. Box 5000
Sheridan, OR 97378

CERTIFICATE OF SERVICE BY MAIL

I, Darrel Quitugua, hereby certify that on this 20th day of December, 2005, I mailed a true and correct copy of the foregoing:

MOTION TO DISMISS OR IN ALTERNATIVE FOR SUMMARY JUDGEMENT

to the following individual(s):

Eric S. Smith
Attorney at Law
P.O. Box 5133 CHRB
Saipan MP 96950

by U.S. Postal Service, postage prepaid.*

DARRELL QUITUGUA

00405-005

Register No.
FCI Sheridan
P.O. Box 5000
Sheridan, OR 97378-5000

* Pleadings by prisoners who represent themselves are to be considered filed at the moment such pleadings are delivered to prison authorities for forwarding to the court clerk. Houston v. Lack, 487 U.S. 266 (1988).

CERTIFICATE OF SERVICE BY MAIL